

**MEETING OF THE COMMITTEE OF THE WHOLE
NOVEMBER 8, 2021**

3:00 p.m. Open Meeting

IN-PERSON ATTENDANCE

Building E
Elgin Community College
1700 Spartan Drive
Elgin, IL 60123

Virtual Attendance for Audience

<https://elgin-edu.zoom.us/j/98630560395>

PH: 1-312-626-6799 Meeting ID: 986 3056 0395#

With the current mitigation status, the November 8, 2021 Committee of the Whole Meeting will be conducted in-person. Members of the public are welcome to attend in person but are encouraged to attend virtually due to limited seating at this time.

Anyone wishing to provide public comment is welcome to do so at the appropriate time indicated on the agenda. Written comments can be sent to dkerruish@elgin.edu in advance of the meeting by 2:30 p.m.

AGENDA

Call to Order by Presiding Officer

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Approval of Meeting Minutes of the Committee of the Whole October 18, 2021**
- 4. Settlement Agreement in Community Unit School District 300, et al. v. Village of Hoffman Estates, et al., Case No 2018 CH 12683, Cook County Circuit Court, State of Illinois**
- 5. Presentations**
 - A. Aspen Top 150
 - B. Equity, Diversity and Inclusion – Anthony Ramos
 - C. Sabbatical Report – Dan Kernler
 - D. Sabbatical Report – Alison Douglas
- 6. Review Board Actions on the November 9, 2021 Regular Board Meeting Agenda**
 - A. Purchases
 1. Arts Center Café Tables Purchase (Board Action No. 088-X-22)
 2. Building D – Re-Route Hot Water Heat Piping (Board Action No. 089-B-22)
 3. Building F – Office Renovation (Board Action No. 090-B-22)
 4. HR Recruitment Services – LinkedIn (Board Action No. 091-A-22)
 - B. Other Agenda Items
- 7. FY23 Budget Discussion**
- 8. Audience Wishing to Address the Board**

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NOVEMBER 8, 2021

AGENDA

5 Minute Recess

9. Old Business

- A. Responsible Bidder Conversation
- B. COVID-19 Mitigation Protocols

10. New Business

- A. Items of Professional Growth
 - 1. ICCTA Meeting November 12-13, 2021
 - 2. ACCT National Legislative Summit February 6-9, 2022
 - 3. Upcoming Community Engagement Events
- B. Lake Spartan Fishing Policy
- C. President's Remarks
- D. Chair's Remarks
- E. Announcements
- F. Issues for Next Month's Agenda

11. Adjournment

The Committee of the Whole meets next at 3:30 p.m. Monday December 13, 2021

**SETTLEMENT AGREEMENT IN COMMUNITY UNIT SCHOOL DISTRICT 300, et al.
v. VILLAGE OF HOFFMAN ESTATES, et al., CASE NO. 2018 CH 12683,
COOK COUNTY CIRCUIT COURT, STATE OF ILLINOIS**

Recommendation

The administration recommends that the Board of Trustees approves the Settlement Agreement in Community Unit School District 300, et al. v. Village of Hoffman Estates, et al., Case No. 2018 CH 12683, Circuit Court of Cook County, State of Illinois.



Dr. David Sam, President

Background

Plaintiffs filed an action against the Village of Hoffman Estates (Village) and Sears Holding Corporation (Sears) seeking declaratory, injunctive and other relief arising from Sears' alleged failure to comply with certain terms and conditions of the Economic Development Area and Tax Increment Allocation Act and an Economic Development Agreement entered into between the Village and Sears. Elgin Community College, as an interested party, is one of the plaintiffs in this matter. Transform, a co-defendant, has an asserted interest in the EDA Agreement and the funds associated with the EDA due to its affiliate relationship with Transform SR, LLC to whom certain assets of Sears were assigned by order of the related Bankruptcy Court through the Assets Purchase Agreement.

On December 22, 2020, the Board approved a settlement where the Parties reached an agreement with Transform whereby Transform was to receive \$2,900,000 by the Plaintiffs herein for which the College's contribution amount was \$227,839.00. This contribution was to be funded by the College's proportionate share of taxes before the remaining distribution is received by the College. However, the Parties continued settlement discussions with the Village of Hoffman Estates and Sears. As a result, the Parties reached a global settlement agreement that resolves all matters and issues for the Parties in both the related Sears bankruptcy matter and in the Circuit Court of Cook County, Illinois matter.

Under the global settlement agreement, the Parties have agreed to:

1. For the Fiscal Years 2018, 2019 and 2020, there is an estimated total of \$16,612,302.00 in the Economic Development Area (EDA) funds. As the second installment of the property taxes have not been fully received by the Village of Hoffman Estates, this is an estimated total.

2. From these EDA funds, Sears will receive \$12,350,000 to settle its PTAB claims in return for withdrawing its PTAB cases and agreeing not to object to terminating the EDA District as a whole.
3. From these EDA funds, the Village of Hoffman Estates will receive \$1,500,000 to agree to adopt an Ordinance terminating the EDA District as a whole effective December 31, 2021 which will allow all taxing districts to levy against the EAV of the entire EDA District (as new property/construction for those taxing districts subject to the PTELL).
4. The Village of Hoffman Estates will send the remaining EDA funds to School District 300 to pay the Transform settlement in the amount of \$1,400,000 and the remaining balance of an estimated amount of \$1,362,392 to all taxing public entities, including the College and excluding the Village of Hoffman Estates, pro rata based on their respective tax rates.
5. All taxing Districts will agree that the Cook County Treasurer will apply all future EDA District PTAB refunds pro rata to all taxing districts within the EDA District for tax years 2020 and prior.
6. This settlement must be approved all parties, then by the New York Bankruptcy Court and then the Circuit Court of Cook County, Illinois after which all applicable claims will be dismissed in the Bankruptcy Court and the Circuit Court of Cook County, Illinois.
7. The College's settlement contribution is to be funded by the College's proportionate share of taxes before the remaining distribution is received by the College.
8. The College's allocated amount of revenue to be received is an estimated amount of \$92,504.00. Further, the College's estimated EAV increment (based on the 2019 EAV increment and 2020 tax rates) for new construction is \$893,492.00.
9. This global settlement will resolve all issues with all Parties related to the Sears bankruptcy matter and in the Circuit Court of Cook County, Illinois matter.

Staff Contact: Mr. Respicio F. Vazquez, General Counsel, 847-214-7760

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re SEARS HOLDINGS CORPORATION, <i>et al.</i> , Debtors.
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Chapter 11
Case No. 18-23538 (RDD)

(Jointly Administered)

**SETTLEMENT AGREEMENT BY AND AMONG THE VILLAGE OF
HOFFMAN ESTATES, THE DEBTORS, COMMUNITY UNIT
SCHOOL DISTRICT 300, THE OTHER TAXING DISTRICTS, THE
COOK COUNTY CLERK AND THE COOK COUNTY TREASURER
CONCERNING THE EDA**

WHEREAS, in 1989 the economic development project area (the “**EDA**”) was established pursuant to the Economic Development Area Tax Increment Allocation Act, 20 ILCS 620/1 *et seq.* (the “**EDA Act**”), certain ordinances were entered in connection therewith, and that certain economic development agreement (the “**EDA Agreement**”) was entered by and between the Village of Hoffman Estates (the “**Village**”) and Sears, Roebuck & Co., as the developer (“**Sears**” or the “**Developer**”).

WHEREAS, on October 10, 2018, Community Unit School District 300 (the “**School District**”) brought suit against the Village and Sears Holdings Corporation (“**SHC**,” and together with certain of its affiliates, including Sears, KMART Holding Corporation and Sears Holdings Management Corporation (“**SHMC**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Bankruptcy Cases**”), collectively, the “**Debtors**”) in the Circuit Court of Cook County, State of Illinois (the “**Circuit Court**”), in a matter styled *Community Unit School District 300 v. Village of Hoffman Estates, et al.*, Case No. 2018 CH 12683 (the “**Illinois Action**”), seeking declaratory, injunctive and other relief arising from SHC’s alleged failure to comply with certain terms and conditions of the EDA Act and the EDA Agreement, pursuant to

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which the Developer receives annual distributions from the Village's special tax allocation fund maintained under the EDA Act (the "**Special Tax Allocation Fund**" and the funds therein, the "**EDA Funds**").

WHEREAS, on October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") commencing the Bankruptcy Cases and staying the Illinois Action pursuant to section 362 of the Bankruptcy Code.

WHEREAS, on January 11, 2019 (ECF No. 1548), the Bankruptcy Court entered a stipulation and order that, among other things, authorized and directed the Village to (i) distribute the forty-five percent (45%) portion (the "**45% Portion**") of those EDA Funds then held in the Special Tax Allocation Fund consisting of property taxes levied for tax year 2017 that were distributed in calendar year 2018 (the "**2017 EDA Funds**") to the Village, the School District, and various other taxing districts within the EDA (specifically, Barrington Area Public Library District, Elgin Community College, Barrington Township, Metropolitan Water Reclamation District of Greater Chicago, Northwest Mosquito Abatement District, Hoffman Estates Park District, Poplar Creek Library District, School District U-46, County of Cook, Cook County Forest Preserve District, collectively, the "**Other Taxing Districts**") and (ii) continue to hold in the Special Tax Allocation Fund the remaining fifty-five percent (55%) (the "**55% Portion**") of such 2017 EDA Funds pending further order of the Bankruptcy Court or a written agreement among the parties thereto.

WHEREAS, on April 18, 2019, the Bankruptcy Court issued (i) the *Order Granting Community Unit School District 300's Motion for Abstention* (ECF No. 3362) allowing the Circuit

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Court to adjudicate certain issues raised before the Bankruptcy Court, and (ii) the *Order Directing Partial Turnover of EDA Funds to Debtors and Reserving the Balance Pending Court Order* (ECF No. 3678) ordering and directing the Village (a) to disburse to the Developer \$2,508,660.33 of the 2017 EDA Funds then held in the Special Tax Allocation Fund and (b) to continue to hold in the Special Tax Allocation Fund the then balance of the 2017 EDA Funds.

WHEREAS, on October 23, 2019, the Bankruptcy Court entered the *Amended Stipulation and Order By and Among the Village of Hoffman Estates, the Debtors, and the Community Unit School District 300 Concerning 2017 EDA Funds Held in the Special Tax Allocation Fund* (ECF No. 5492), pursuant to which, among other things: (i) the Debtors relinquished any rights, claims or interests they may have had with respect to property taxes levied for tax year 2018 that were distributed in calendar year 2019 (the “**2018 EDA Funds**”) and any subsequent years’ EDA Funds in exchange for, among other things, receipt of \$5,153,317 of the 2017 EDA Funds then held in the Special Tax Allocation Fund; and (ii) the School District released all rights, claims and interests in and to the 2017 EDA Funds then held in the Special Tax Allocation Fund and withdrew its remaining claims and objections to confirmation of the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (ECF No. 4476) (as the same may have been amended or modified, the “**Plan**,” and as subsequently confirmed by order of the Bankruptcy Court on October 15, 2019 (the “**Confirmation Order**”) in exchange for, among other things, receipt of \$2,000,000 of the 2017 EDA Funds then held in the Special Tax Allocation Fund.

WHEREAS, on March 4, 2020, the Circuit Court entered an agreed order that, among other things, authorized and directed the Village to (i) distribute the 45% Portion of the 2018 EDA Funds then held in the Special Tax Allocation Fund to the School District and the Other Taxing

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Districts consistent with the EDA Act and (ii) continue to hold in the Special Tax Allocation Fund the remaining 55% Portion of such 2018 EDA Funds (there being no 2017 EDA Funds remaining) pending further order of the Circuit Court.

WHEREAS, on or about December 9, 2016, November 13, 2017, and January 23, 2019, SHMC, one of the Debtors, filed before the Property Tax Appeal Board (the “**PTAB Board**”) certain property tax assessment appeals for tax years 2016, 2017 and 2018 (Case Nos. 16-21549, 17-20023 and 18-23983, respectively) relating to certain real property located within the EDA and seeking property tax assessment refunds (the “**Sears PTAB Appeals**”). The School District and Village intervened in each of the Sears PTAB Appeals, which are currently scheduled for hearings before the PTAB Board commencing on November 30, 2021.

WHEREAS, by Order dated November 23, 2020 (ECF No. 9116), the Bankruptcy Court denied the School District’s motion to deem the EDA Agreement rejected pursuant to the Plan, or alternatively, to compel the Debtors to reject the EDA Agreement; and on December 4, 2020, the School District appealed such order (the “**Bankruptcy Appeal**”) to the United States District Court for the Southern District of New York (the “**District Court**”). By Order dated December 23, 2020, including extension orders entered thereafter, all deadlines in the Bankruptcy Appeal have been stayed pending further order of the District Court.

WHEREAS, on or about December 9, 2020, the School District, Transform (as defined therein) and the other Plaintiffs (as defined below) executed that certain settlement agreement (as thereafter amended, the “**Transform Settlement Agreement**”), pursuant to which, among other things, the parties thereto settled certain asserted rights, claims and interests of Transform relating to, among other things, the Illinois Action, the EDA Agreement and certain EDA Funds.

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WHEREAS, the initial complaint filed in the Illinois Action by the School District has been amended from time to time to, among other things, add and realign parties thereto such that currently pending before the Circuit Court is the “Fifth Amended Verified Complaint”, which complaint remains subject to, among other things, the Circuit Court’s Order dated August 10, 2021 directing plaintiffs (the “**Plaintiffs**”) to file their verifications to the Fifth Amended Verified Complaint, or to file a Sixth Amended Verified Complaint.

WHEREAS, on or about February 24, 2021, the Debtors, the Village and the School District agreed to non-binding mediation (“**Mediation**”) before John DeGroot of DeGroot Partners, LLC regarding, among other things, various issues and claims relating to the Illinois Action, the Sears PTAB Appeals, the Bankruptcy Cases, the Bankruptcy Appeal, the EDA, the EDA Agreement, the EDA Act and the EDA Funds.

WHEREAS, as a result of the Mediation, the Debtors, the Village and the School District have reached agreement on the principal terms of a global settlement, and the Cook County Clerk, Cook County Treasurer and the Other Taxing Districts have joined in agreement on the terms of that global settlement, which settlement terms are fully set forth in this agreement (this “**Settlement Agreement**”).

WHEREAS, the School District shall receive substantial financial benefit, including their tax base benefit, of the Debtors’ irrevocable rejection of the EDA Agreement, the irrevocable withdrawal and waiver by Transform of its designation rights in respect of the EDA Agreement and the entry by the Village of the Ordinance (as defined below) on or prior to the EDA Dissolution Effective Date (as defined below and subject to the proviso in Section 3.e. herein regarding the non-occurrence of the EDA Dissolution Effective Date).

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WHEREAS, in the aggregate, the 55% Portion of the 2018 EDA Funds, the 2019 EDA Funds, and the 2020 EDA Funds received to date will be sufficient to pay all of the distribution obligations under this Settlement Agreement.

WHEREAS, each Party covenants and represents that it has obtained all required internal approvals and authorizations in respect of the terms of this Settlement Agreement and therefore maintains full authority to enter into and effectuate their respective responsibilities and obligations under the terms of this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein and other good and valuable consideration exchanged by and among all of the undersigned parties (collectively, the “**Parties**”), the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. The above recitals and attached exhibits are incorporated and included in the terms of this Settlement Agreement.

2. In consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions of this Settlement Agreement, the **Debtors**:

a. Shall, within five (5) business days of execution of this Settlement Agreement by the undersigned parties to this Settlement Agreement (collectively, the “**Parties**”), file in the Bankruptcy Court a motion pursuant to Fed. R. Bankr. P. 9019(a) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Settlement Order**”) (1) approving this Settlement Agreement, and (2) ordering the EDA Agreement rejected without any further action by the Debtors, notice, or order from the Bankruptcy Court, effective as of December 31, 2021, contingent upon (i) the School District filing the Stipulation executed by Transform withdrawing its designation of the EDA Agreement as set forth in paragraph 4.e of this Settlement

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Agreement, (ii) the Debtors' receipt of \$12.35 million in payments as set forth in paragraph 2.b of this Settlement Agreement, and (iii) the Village's receipt of \$1.5 million in payments as set forth in paragraph 3.d of this Settlement Agreement. The Village hereby stipulates that it has no rejection damages claims in connection with the EDA Agreement.

b. Shall receive a one-time cash payment of \$12.35 million (twelve million three hundred fifty thousand dollars), which shall be paid in full by the Village from the Special Tax Allocation Fund within five (5) business days following the EDA Dissolution Entry Date (as defined below). Funding of the foregoing settlement distribution shall come solely from a combination of the following sources in the following order: (1) from the 55% Portion of the 2018 EDA Funds currently held the Special Tax Allocation Fund; (2) from the 55% Portion of the property taxes levied for tax year 2019 that were distributed in calendar year 2020 (the "**2019 EDA Funds**") and currently held in the Special Tax Allocation Fund; (3) from the 55% Portion of the property taxes levied for tax year 2020 that were distributed in calendar year 2021 (the "**2020 EDA Funds**") held in the Special Tax Allocation Fund; (4) from the 45% Portion of the 2019 EDA Funds; and (5) from the 45% Portion of the 2020 EDA Funds currently held in or to be received into the Special Tax Allocation Fund.

c. Shall, within ten (10) business days after EDA Dissolution Entry Date (but only after receipt of the payment described in subparagraph 2.b. above), withdraw or otherwise cause to be withdrawn, *with prejudice*, all pending property tax assessment appeals before the PTAB Board relating to real property of the Debtors located solely within the EDA, including, without limitation, the Sears PTAB Appeals.

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3. In consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions of this Settlement Agreement, including, without limitation, the occurrence of the Settlement Effective Date, the **Village**:

a. Shall receive and retain, without offset, all statutory distributions provided for and entitled to under the EDA Act for tax year 2020 (i.e., calendar year 2021) and all prior tax years during the existence of the EDA.

b. Shall continue to maintain all of its rights, claims and interests provided for and entitled to under the EDA Act through the end of tax year 2020, except as otherwise expressly set forth in this Settlement Agreement.

c. Shall receive annually as provided by law any property taxes levied by the Village directly against properties formerly located in the EDA and disbursed by the Cook County Treasurer for tax years 2021 and thereafter (i.e., calendar years 2022 and thereafter).

d. Shall be paid from the Special Tax Allocation Fund a one-time cash payment of \$1.5 million (one million five hundred thousand dollars) within five (5) business days following the EDA Dissolution Entry Date (as defined below). Funding of the foregoing settlement distribution shall come solely from a combination of the following sources in the following order: (1) from the 55% Portion of the 2018 EDA Funds currently held in the Special Tax Allocation Fund; (2) from the 55% Portion of the 2019 EDA Funds currently held in the Special Tax Allocation Fund; (3) from the 55% Portion of the 2020 EDA Funds held in the Special Tax Allocation Fund; (4) from the 45% Portion of the 2019 EDA Funds; and (5) from the 45% Portion of the 2020 EDA Funds currently held in or to be received into the Special Tax Allocation Fund.

e. Shall adopt or otherwise cause the adoption of an ordinance dissolving the EDA (the “**Ordinance**”), substantially in the form attached hereto as **Exhibit B**, which Ordinance

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shall be entered and published within five (5) business days following the Settlement Effective Date (the “**EDA Dissolution Entry Date**”), but which EDA dissolution shall only become effective as of December 31, 2021 (the “**EDA Dissolution Effective Date**”); provided, however, that if the EDA Dissolution Entry Date does not occur prior to December 31, 2021, this Settlement Agreement (including, without limitation, any and all actions undertaken in connection with this Settlement Agreement) is and shall be deemed null and void and unenforceable, all Parties shall retain all of their respective rights, claims and interests under or in respect of the EDA, the EDA Act, the EDA Agreement and otherwise, and the Village shall not have waived, nor be deemed to have waived, any rights, claims and/or interests it may have under the EDA Act, including, without limitation, under Section 4(g)(4)(A) thereof.

f. Shall, within seven (7) business days following EDA Dissolution Entry Date (subject to the proviso in Section 3.e. herein regarding the non-occurrence of the EDA Dissolution Effective Date), serve a certified copy of the Ordinance on both the Cook County Clerk and the Cook County Treasurer. The Cook County Clerk and the Cook County Treasurer shall take all actions necessary to make the EDA properties fully subject to the property tax levies of the School District and the Other Taxing Districts for tax year 2021 pursuant to Section 7 of this Settlement Agreement.

g. Shall, subject to the applicable terms of and obligations under this Settlement Agreement, continue to comply with the EDA Act until the EDA Dissolution Effective Date.

h. Shall disburse to the Debtors and the School District the EDA Funds in such amounts, from such sources and in accordance with such terms and conditions as set forth in this Settlement Agreement, including but not limited, to subparagraph 4.b herein.

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i. Shall provide to the School District an accounting of all EDA Funds remaining prior to disbursement of such EDA Funds to the School District pursuant to Section 4.b. herein.

4. In consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions of this Settlement Agreement, including, without limitation, the occurrence of the Settlement Effective Date, the **School District**:

a. Shall, within five (5) business days of the EDA Dissolution Entry Date, in concert with the Other Taxing Districts, dismiss or otherwise cause to be dismissed, *with prejudice*, all non-bankruptcy litigation relating to the EDA, including, without limitation, the Illinois Action and the objections to the Sears PTAB Appeals, including by filing in the Circuit Court an agreed upon dismissal order (the “**Circuit Court Dismissal Order**”) substantially in the form attached hereto as **Exhibit C**. *For the avoidance of doubt*, the School District shall dismiss its objections, claims and related filings pending before the Bankruptcy Court at the time and in the manner provided in subparagraph 4.f *infra*, and the School District shall dismiss its Bankruptcy Appeal at the time and in the manner provided in subparagraph 4.g *infra*.

b. Shall be paid by the Village any and all EDA Funds available from the 55% Portion and the 45% Portion of the EDA Funds, if any, remaining in the Special Tax Allocation Fund solely after receipt by the Debtors and the Village of all of their respective distributions as set forth in and required under Sections 2.a. and 3.d. herein. Such payment by the Village, solely from the EDA Funds remaining in the Special Tax Allocation Fund, shall be made no later than seven (7) business days after the Debtors and the Village have received full and final payment of their respective distributions as set forth in and required under Sections 2.a. and 3.d. herein. To the extent any additional 2020 EDA Funds are subsequently received by the Village from the Cook

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County Treasurer into the Special Tax Allocation Fund, such 2020 EDA Funds shall be distributed to the School District by the Village from the Special Tax Allocation Fund within fourteen (14) business days of each receipt thereof.

c. Shall use any and all EDA Funds paid to the School District pursuant to this Settlement Agreement to satisfy its obligations, including: (i) first, to comply with the terms of the Transform Settlement Agreement unless Transform and the School District agree otherwise and (ii) second, to distribute the balance of the EDA Funds, after payments required pursuant to this Settlement Agreement and the Transform Settlement Agreement, to the School District and the Other Taxing Districts, excepting the Village, consistent with the EDA Act (including without limitation Section 4(g)(2)(D) thereof), and utilizing tax year 2020 tax rates to calculate the distributions. The receipt by each of the Other Taxing Districts of its proportionate share of the balance of EDA Funds constitutes an acknowledgment that all of its claims relating to the Illinois Action have been settled and paid.

d. Shall receive annually as provided by law its applicable non-EDA tax share of amounts provided by the Cook County Treasurer for tax years 2021 and thereafter (i.e., calendar years 2022 and thereafter).

e. Shall, within ten (10) business days following the EDA Dissolution Entry Date, file with the Bankruptcy Court the “Stipulation Irrevocably Withdrawing Designation of Transform Holdco LLC of Sears Economic Development Agreement” (the “**Designation Rights Stipulation**”), effective as of the EDA Dissolution Effective Date, substantially in the form attached hereto as **Exhibit D**.

f. Shall, within five (5) business days following the Debtors’ rejection of the EDA Agreement becoming effective, withdraw or otherwise cause to be withdrawn, *with*

prejudice, all of the School District's objections, claims and related filings pending before the Bankruptcy Court.

g. Shall, within five (5) business days following the Debtors' rejection of the EDA Agreement becoming effective, dismiss or otherwise cause to be dismissed, *with prejudice*, the Bankruptcy Appeal pending before the District Court.

5. In consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions of this Settlement Agreement, including, without limitation, the occurrence of the Settlement Effective Date, the School District and the Other Taxing Districts each agree, authorize and direct the Cook County Treasurer (and any other applicable agency), and the Cook County Treasurer agrees, to deduct, debit, offset, reimburse and/or otherwise collect, directly and solely from ad valorem tax levy for the School District and the Other Taxing Districts (it being clear that the Village shall be expressly excluded from any and all such liabilities, deductions, offsets, collections and/or reimbursement obligations notwithstanding the EDA Act or any other applicable law) in proportion to their recovery percentages (consistent with the language in the last sentence of Section 4.5(b) of the EDA Act), any and all property tax assessment refund liabilities arising from or relating to any and all properties located within the EDA prior to and including tax year 2020, that were paid by or through the Cook County Treasurer in respect of any property tax assessment related refunds and appeals (including any PTAB appeals) for any time periods prior to the EDA Dissolution Effective Date. Such refund liabilities paid on or after levy year 2021 shall be included in the County Treasurer's annual certification pursuant to 35 ILCS 200/18-233.

6. Notwithstanding anything herein to the contrary, the Village, and its officers, directors, committee members, employees, agents, advisors, representatives, attorneys and other

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professionals are hereby exculpated and shall have no liability to the fullest extent of any and all claims (as defined in Section 101(5) of the Bankruptcy Code), causes of actions, demands, suits, liabilities, obligations, losses, damages, offsets and/or judgments of any kind or nature, whether known or unknown, contingent or non-contingent, statutory or non-statutory, arising from, out of or based upon actions taken by the Village in compliance with the terms of this Settlement Agreement, including, without limitation, the distributions made or to be made under this Settlement Agreement, including the Village's distributions from the Special Tax Allocation Fund solely to the School District and to no Other Taxing Districts of any remaining 55% EDA Funds and/or 45% EDA Funds, if any, as provided in Section 4.b. of this Settlement Agreement. For the avoidance of doubt, neither the Village nor its officers, directors, committee members, employees, agents, advisors, representatives, attorneys or other professionals are exculpated or otherwise excused from liability for any failure to comply with the terms of this Settlement Agreement.

7. In consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions of this Settlement Agreement, including, without limitation, the occurrence of the Settlement Effective Date, the Cook County Clerk and the Cook County Treasurer each agrees (a) to extend the property tax levies of the Village, the School District and the Other Taxing Districts directly against the properties within the EDA beginning with the 2021 tax year and that the incremental equalized assessed value of the properties located within the EDA will be recognized in tax year 2021 as "New Property" under the Illinois Property Tax Extension Limitation Law (35 ILCS 200/18-155, *et seq.*), and (b) to distribute any and all property taxes extended against properties located within the EDA to the Village, the School District and the Other Taxing Districts based on their respective tax rates beginning with the 2021 tax year.

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8. Each of the Parties, on behalf of themselves and their past, present, and future officers, directors, board members, trustees, employees, agents, advisors, accountants, attorneys, assignees, and representatives or other entities acting on their behalf or through which they claim a beneficial interest, hereby mutually exculpate, release and absolutely and forever discharge (*except for each of the Parties' respective performance of the obligations set forth in this Settlement Agreement and as otherwise provided herein*) each other Party, as well as their past and present companies, subsidiaries, and affiliates, and their respective present and former officers, directors, shareholders, trustees, employees, agents, advisors, accountants, attorneys, assignees, and representatives, of and from any and all claims (as defined in Section 101(5) of the Bankruptcy Code), demands, damages, debts, liabilities, judgments, accounts, obligations, costs, expenses, actions, and causes of action of every kind and nature whatsoever, whether now known or unknown, asserted or which could have been asserted, suspected or unsuspected, choate or inchoate, which the Parties now have, own, or hold, or at any time heretofore ever had, owned, or held against any of them from the beginning of the world to the EDA Dissolution Effective Date, which arise out of, relate to, or are based upon the Illinois Action, the Sears PTAB Appeals, the Bankruptcy Cases, the Bankruptcy Appeal, the EDA Agreement, the EDA, the EDA Act, the EDA Funds, any claims or violations arising under section 362 of the Bankruptcy Code and any claims in any way relating to or arising from the Village's administration of the EDA and compliance with the EDA Act.

9. All Other Taxing Districts shall join in and comply with, among other things, the (a) authorizations, directions and contributions contemplated in this Settlement Agreement, (b) dismissal, *with prejudice*, of all applicable litigation, including, without limitation, the Illinois Action, and (c) grant of mutual releases by and among all Parties as set forth herein, including,

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without limitation, the release of the Village for solely distributing to the School District and no Other Taxing Districts any remaining 55% Portion and/or 45% Portion of the EDA Funds, if any, as required herein.

10. Subject to the proviso in Section 3.e. herein regarding the non-occurrence of the EDA Dissolution Effective Date, this Settlement Agreement shall be effective upon entry by the Bankruptcy Court of an order approving this Settlement Agreement which shall be substantially in the form of the Settlement Order (the “**Settlement Effective Date**”).

11. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, notices and documents, as another Party may reasonably request in order to carry out the intent and accomplish the purposes of this Settlement Agreement and the consummation of the transactions contemplated thereby and hereby.

12. The Village, the School District, and the Other Taxing Districts represent that no authorized representatives or officials will take any action to limit the full effect of the Ordinance or this Settlement Agreement, whether by veto, board action, or otherwise.

13. This Settlement Agreement may be executed in multiple counterparts, any of which may be transmitted by e-mail/PDF, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. This Settlement Agreement may be modified only by a written document signed by the Parties. No waiver of this Settlement Agreement or of any of the promises, obligations, terms, or conditions hereof shall be valid unless it is written and signed by the Party against whom the waiver is to be enforced.

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WEIL DRAFT 10/19/21**

15. Each Party acknowledges that it has had the opportunity to consult with legal counsel of its choosing prior to entering into this Settlement Agreement and that it enters this Agreement knowingly and voluntarily. By executing this Settlement Agreement, each Party represents and attests to the other that (a) the person executing this Settlement Agreement on its behalf is duly authorized and empowered (including, without limitation, approval by their governing bodies pursuant to 5 ILCS 220/5, *et seq*) to execute and deliver this Settlement Agreement, and (b) this Settlement Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with the Settlement Agreement's terms.

16. The Parties cooperated in the drafting of this Settlement Agreement, and in the event that it is determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

17. This Settlement Agreement is solely for the benefit of, and shall be binding upon, the Parties hereto and their respective successors or permitted assigns, and shall not confer any right or remedies, either intended or incidental, upon any third party who is not a Party to this Settlement Agreement.

18. To the extent there is any inconsistency between this Settlement Agreement and the Plan and Confirmation Order, this Settlement Agreement shall supersede and govern.

19. This Settlement Agreement, including all attachments hereto, supersedes all prior oral or written agreements, communications, and negotiations, if any, by and among the Parties (excepting prior stipulations executed by and among the Parties and orders entered in the Bankruptcy Cases and in the Illinois Action) and constitutes the entire agreement by and among the Parties with respect to the subject matter hereof.

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20. The Bankruptcy Court and the Circuit Court shall concurrently retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Settlement Agreement and the Settlement Order.

(Signature pages follow)

Signature: _____

Printed Name: _____

Title: _____

Community Unit School District 300

Signature: _____

Printed Name: _____

Title: _____

Debtors, including Sears, Roebuck and Co., As Developer

Signature: _____

Printed Name: _____

Title: _____

School District U-46

Signature: _____

Printed Name: _____

Title: _____

Hoffman Estates Park District

Signature: _____

Printed Name: _____

Title: _____

County of Cook

Signature: _____

Printed Name: _____

Title: _____

The Village of Hoffman Estates

Signature: _____

Printed Name: _____

Title: _____

Metropolitan Water Reclamation District of Greater Chicago

Signature: _____

Printed Name: _____

Title: _____

Elgin Community College

Signature: _____

Printed Name: _____

Title: _____

Poplar Creek Library District

Signature: _____

Printed Name: _____

Title: _____

Cook County Forest Preserve District

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Signature: _____

Printed
Name: _____

Title: _____

Barrington Township

Signature: _____

Printed
Name: _____

Title: _____

Northwest Mosquito Abatement District

Signature: _____

Printed
Name: _____

Title: _____

Cook County Clerk

Signature: _____

Printed Name: _____

Title: _____

Signature: _____

Printed
Name: _____

Title: _____

Barrington Area Public Library District

Signature: _____

Printed
Name: _____

Title: _____

Cook County Treasurer

Signature: _____

Printed
Name: _____

Title: _____